

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KURT MADSEN,

Plaintiff,

v.

STATE OF WASHINGTON,
ATTORNEY GENERAL BOB
FURGUSON, GOVERNOR JAY
INSLEE, SECRETARY OF STATE
KIM WYMAN, SECRETARY OF
DEPARTMENT OF CORRECTIONS
(DOC) BERNARD WARNER,
SUPERINTENDENT SCOTT
RUSSELL, SUPERINTENDENT PAT
GLEBE, JOHN THOMPSON, SHARON
THATCH, UNKNOWN LOCAL 117
OFFICIALS, UNKNOWN DOC
OFFICERS,

Defendants.

No. C12-5928 RBL/KLS

ORDER DENYING MOTION FOR
COUNSEL

Before the Court is Plaintiff's Motion to Appoint Counsel. ECF No. 16. Having carefully considered the motion and balance of the record, the Court finds that the motion should be denied.

DISCUSSION

No constitutional right exists to appointed counsel in a § 1983 action. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). *See also United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995) ("[a]ppointment of counsel under this section is discretionary, not mandatory.") However, in "exceptional circumstances," a district court may

1 appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28
2 U.S.C. § 1915(d)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other*
3 *grounds*, 154 F.3d 952 (9th Cir. 1998) (emphasis supplied.) To decide whether exceptional
4 circumstances exist, the court must evaluate both “the likelihood of success on the merits [and]
5 the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal
6 issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting
7 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts that show he
8 has an insufficient grasp of his case or the legal issue involved and an inadequate ability to
9 articulate the factual basis of his claim. *Agyeman v. Corrections Corp. of America*, 390 F.3d
10 1101, 1103 (9th Cir. 2004).

12 That a *pro se* litigant may be better served with the assistance of counsel is not the test.
13 *Rand*, 113 F.3d at 1525. Moreover, the need for discovery does not necessarily qualify the
14 issues involved as “complex.” *Wilborn*, 789 F.2d at 1331. Most actions require development of
15 further facts during litigation. But, if all that was required to establish the complexity of the
16 relevant issues was a demonstration of the need for development of further facts, then
17 practically all cases would involve complex legal issues. *Id.*

19 Plaintiff has demonstrated an ability to articulate his claims *pro se* in a clear fashion
20 understandable to this Court. Based on Plaintiff’s allegations, the Court notes that this is not a
21 complex case involving complex facts or law. In addition, Plaintiff presents no evidence to
22 show that he is likely to succeed on the merits of his case. Under separate Report and
23 Recommendation, this Court is recommending that Plaintiff’s amended complaint be dismissed
24 because it is frivolous and Plaintiff has failed to state a claim upon which relief may be granted.
25

26 Accordingly, it is **ORDERED**:

1 (1) Plaintiff's motion for counsel (ECF No. 16) is **DENIED**.

2 (2) The Clerk shall send a copy of this Order to Plaintiff.

3 **DATED** this 13th day of March, 2103.

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6 Karen L. Strombom
7 United States Magistrate Judge
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